

MINUTES OF AUGUST 3, 2015

The regular meeting of the Sussex County Board of Adjustment was held on Monday, August 3, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with Mr. James Sharp – Assistant County Attorney, and staff members, Ms. Janelle Cornwell – Planning and Zoning Manager and Mrs. Jennifer Norwood – Recording Secretary.

The Pledge of Allegiance was led by Mr. Callaway.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Revised Agenda as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Findings of Fact for June 22, 2015 as circulated. Motion carried 5 – 0.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

PUBLIC HEARINGS

Case No. 11612 – 19366 Coastal Highway, LLC – seek a special use exception to replace an existing billboard and variances from the side yard setback, the separation from another billboard, height, the distance from public lands and maximum square footage for a billboard requirements (Section 115-159.5B(2), 115-159.5B(3), 115-159.5C, and 115-210A(3) of the Sussex County Zoning Ordinance). The property is located on the west side of Coastal Highway (Route One) between Miller Road and Airport Road. 911 Address: 19366 Coastal Highway, Rehoboth Beach. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.29.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Patricia Derrick and James Derrick were sworn in to testify about the Application. David Hutt, Esquire, presented the case to the Board on behalf of the Applicants and submitted exhibits for the Board to review.

Mr. Hutt stated that the Applicants are requesting a special use exception to replace an existing billboard, a variance of 42 feet from the fifty (50) feet side yard setback requirement for a billboard, a variance of 89 feet from the three hundred (300) feet separation requirement from another billboard, a variance of 292 feet from the three hundred (300) feet separation requirement from public lands, a variance of six (6) feet from the twenty-five (25) feet maximum height requirement for a billboard, and a variance of 276 square feet from the 300 square feet maximum

allowable square footage for a billboard per side; that the Applicants want to replace the existing billboard; that the current billboard advertises The Sea Shell Shop, which is located on the same property; that the Applicants intend to correct the type of advertising on the sign; that the Property is located along Coastal Highway; that the Property was historically used as a rest stop; that a billboard was located on the Property at that time; that the Derrick family purchased the Property in 1993 and transferred the Property to an LLC in 2010; that the Property is zoned commercial; that the Property is unique in shape and topography; that the Property is wedge-shaped; that the existing store and miniature golf course are located on a high point / knoll of the Property; that the existing billboard is located on the lowest point of the Property; that there is more variation in the topography of this site than on most other properties in the area; that the existing wooden structure is in need of repair and requires regular maintenance; that the proposed height of the billboard will allow for better visibility of the sign; that the low lying land and other structures on and adjacent properties create a need for the height variance; that the Sussex County Pump Station #201 is located on the adjacent property and is at a higher elevation than the existing billboard; that there is an existing on-premise sign for a neighboring shopping center which sits on top of a small hill; that the on-premise sign on the neighboring property is at a higher elevation; that the existing billboard is approximately 500 square feet in size and a wooden pole structure; that the Applicant proposes to replace the billboard with a steel monopole structure and to raise it so that it does not appear to be located in a hole; that the existing billboard was on the Property when the Applicants purchased the Property in 1993; that the Applicants modified the existing billboard in 1995 with the approval of the Board; that there are no dwellings, churches, or schools within a three-hundred (300) feet radius; that there is an existing billboard within the three-hundred (300) feet of the proposed billboard and it predates zoning regulations; that the pump station is located within three hundred (300) feet of the site; that the proposed billboard will be thirty-one (31) feet tall; that the proposed steel monopole billboard will be fully engineered to withstand wind loads and require minimal maintenance; that the Applicant has had to replace several telephone poles over the years due to damage to the sign; that the billboard would be the correct height if it were located on ground which was even with the adjacent Route One; that the ground where the billboard is located is below the height of Route One; that the proposed billboard will measure 12 feet by 48 feet and be two-sided; that the proposed sign meets all of the requirements of the Delaware Department of Transportation ("DelDOT"); that the proposed billboard will not substantially adversely affect the neighboring and adjacent properties; that the proposed billboard will be less obtrusive than the existing billboard; that the proposed billboard is consistent with other billboards in the area; that the area is highly developed with commercial uses; that the Applicants are requesting similar approval that other replacement billboards have received from the Board; that replacement signs take aging and obsolete signs and replace them with engineered structures that are more aesthetically pleasing; that the proposed sign is not currently leased but there are no vacant billboards in the area along Route One; that the Applicants have other businesses and can use the billboard for their advertisement; that the Property is unique in shape and topography; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the exceptional practical difficulty was not created by the Applicant; that the Applicant did not create the property or the existing elevations; that the Applicant did not put in

the pump station or neighboring sign; that the use will not be detrimental to the public welfare; that the variances will not affect the character of the neighborhood; that the proposed billboard is smaller than nine (9) other billboards in the area; that the variances are the minimum variances to afford relief; that the current sign is eighteen (18) feet tall; and that the proposed height will allow the sign to be the same height as the existing billboard across the street.

Mr. Derrick, under oath, confirmed the statements made by Mr. Hutt.

Ms. Derrick testified that the pump station has been on the neighboring property since 2005.

Gregory Fisher was sworn in with Mr. Richard Berl, Esquire to testify in opposition to the Application and submitted exhibits for the Board to review.

Mr. Berl stated that he represents Gannos, LLC, who is the neighboring property owner; that Gannos, LLC owns the existing shopping center behind the Applicant's property; that Gannos, LLC has owned the property since 2005; that the existing billboard currently advertises the on premise business, which is a violation of the Zoning Ordinance; that the Applicant's existing on premise sign advertises an off premise business, which is also in violation of the Zoning Ordinance; that there is a second on premise sign on the Property, which possibly violates the Zoning Ordinance; that there is a large ice cream cone located on the Property as well; that the Applicant chose the current location for the existing billboard; that the Applicant chose the low lying area and created their own hardship; that Gannos, LLC and the tenants in the shopping center are concerned the proposed sign will block visibility to their existing businesses; that Gannos, LLC is concerned their current tenants will not renew their leases and seek property closer to Route One; that the proposed billboard is much higher and larger than the existing billboard; that the Property dips where the billboard is located but it has not changed since the Applicant placed the billboard; that the Property is already reasonably developed and possibly even over-developed; that the exceptional practical difficulty was created by the Applicant; that the proposed billboard adversely affect the uses of the neighboring and adjacent properties; that the character of the neighborhood has changed in recent years; that the pending moratorium shows Sussex County is viewing billboards differently; that the variances requested are not the minimum variances to afford relief; that the existing violations on the Property also raise concerns if the Application violates the "Clean Hands Ordinance"; that the variances requested by the Applicant are outrageous; that the proposed billboard will be two (2) times larger than the maximum allowable square footage for a billboard; and that existing billboard does not create an issue.

Gregory Fisher, property manager for Gannos, LLC, under oath, confirmed the statements made by Mr. Berl.

Mr. Berl stated that his client and their tenants are concerned that the proposed billboard will divert attention away from the shopping center; that his client and the tenants have gotten used

to the current billboard; that the proposed billboard is far different from the current billboard; that the existing billboard does not block his client's sign; and that his client is concerned about the height of the proposed sign.

In rebuttal, Mr. Hutt stated that Shell We Bounce is located off the Property but the other signs advertise businesses on the Property; that the signs in violation on the Applicant's property were not willful; that the Applicant never received notice of violation from Sussex County in reference to the sign issues; that the existing billboard has existed on the Property for approximately fifty (50) years; that the existing sign was on the Property when the Applicant purchased the Property; that the proposed billboard will be V-shaped; that the proposed billboard will not impact the view of the existing shopping center; that tenants in the existing shopping center wanting to relocate closer to Route One should have no bearing on this application; and that it is not economically feasible to replace the sign with a smaller sign.

Patricia Derrick testified that they replaced the poles on the existing billboard in 2009; that she has verbal approval for the ice cream sign from the Planning and Zoning Department; that the ice cream sign is temporary and only used May through September; that she was not aware of any violations with her current signs; that the Board approved the existing billboard in 1995 and a picture showed it would advertise the Sea Shell Shop; that they replaced the pylons and added plywood to the existing sign in 1995; that she was not aware of any violations on her property; and that a smaller sign would not be economically feasible to replace with a steel monopole structure.

The Board found that no parties appeared in support of the Application.

The Board found that two (2) parties appeared in opposition to the Application.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the case be tabled until August 17, 2015. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11613 – Nicholas Michael – seeks variances from the rear yard and side yard setback requirements (Section 115-185F of the Sussex County Zoning Ordinance). The property is located on the north side of Janice Circle approximately 426 feet east of Oliver Drive within the Bayview Landing Subdivision. 911 Address: 37572 Janice Circle, Selbyville. Zoning District: HR-1. Tax Map No.: 5-33-13.00-162.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Helmar Michael and Nicholas Michael were sworn in and testified requesting a variance of three (3) feet from the five (5) feet rear yard setback requirement and a variance of 2.6 feet from the five (5) feet side yard setback requirement for a proposed shed.

Nicholas Michael testified that the proposed shed will measure 12 feet by 12 feet; that the Property is not square; that the Property has an angled property line; that the Property abuts to common area owned by the community; that he plans to square the proposed shed with the existing dwelling; that the shed will be located eight (8) feet away from the dwelling so that they could access the rear of the dwelling if necessary; that the proposed location of the shed will allow room for a proposed sidewalk and flower bed between the existing dwelling and proposed shed; that his neighbors support the Application; that the narrow lot and angled property line make the Property unique; that the shed will be on a permanent foundation; that he plans to retire and live there permanently and will need the storage space; that there are other similar sheds in the development; that the Architectural Review Board approves the proposed shed and location; and that the proposed location is the only option for the shed. Mr. Michael submitted pictures and exhibits for the Board to review.

The Board found that five (5) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11613 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique as it is irregularly shaped and has an angled property line;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11614 – Debbie L. Ruark – seeks variances from the side yard and front yard setback requirements (Section 115-42B and 115-185F of the Sussex County Zoning Ordinance). The property is located on the north side of Blue Bill Drive approximately 1476 feet east of Swann Drive. 911 Address: 37063 Blue Bill Drive, Selbyville. Zoning District: GR. Tax Map No.: 5-33-12.16-408.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Bruce Wright was sworn in and testified requesting a variance of 3.3 feet from the ten (10) feet side yard setback requirement for an existing manufactured home, a variance of one (1) foot from the ten (10) feet front yard setback requirement for an existing manufactured home, and a variance of 0.1 feet from the five (5) feet side yard setback requirement for an existing shed; that he is the realtor for the Applicants; that the Applicants live in a nursing home; that the Applicants purchased the Property in 1990; that the existing structures were on the Property when the Applicants purchased it; that the Applicants made no additions to the structures since purchasing the Property; that the Applicants are selling the Property; that a survey completed for settlement showed the encroachments; that the Applicants were unaware of the encroachments; that the variances requested are the minimum variances to afford relief; that the undersized narrow lot is unique in size; that the Property cannot otherwise be developed; that the variances are necessary to enable reasonable use of the Property; that the rear yard property line extends into the lagoon; that the existing structures are on permanent foundations and cannot be moved into compliance; and that the exceptional practical difficulty was not created by the Applicants.

Ms. Cornwell advised the Board that numerous variances have been granted in the development and along Blue Bill Drive.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11614 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The Property is unique in size as it is only 50 feet by 110 feet;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variances will not alter the essential character of the neighborhood; and
5. The variances sought are the minimum variances necessary to afford relief.

Motion by Mr. Rickard, second by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11615 – Michael Carta & Ellen Carta – seek a variance from the maximum allowable height requirement for a fence (Section 115-185C of the Sussex County Zoning Ordinance). The

property is located on the northeast corner of Roberts Road and Old Mill Road. 911 Address: 2 Roberts Road, Lewes. Zoning District: AR-1. Tax Map No.: 3-34-1.00-295.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Carta was sworn in and testified requesting a variance of 2.5 feet from the 3.5 feet maximum allowable height requirement for a fence in a front yard setback; that the Property consists of ½ acres; that the Leland Cypress trees on the Property were damaged in a storm and had to be removed; that the trees were located on the rear of the Property; that the proposed vinyl fence will be six (6) feet high along the rear yard property line; that the fence would not be visible from Old Mill Road due to the location of Leland Cypress trees on neighboring properties; that the road is a dead end road; that the Property to the rear is not attractive; that the proposed fence will not be visible to the neighbors to the rear yard; that the proposed fence will not interfere with the traffic or the visibility to the road; that the fence will block their view of the neighbor's property; that the fence will be an attractive fence that looks like wood; that the fence will connect to an existing split rail fence along Road 265A; and that the proposed fence will keep trash from blowing onto their property. Mr. Carta submitted pictures for the Board to review.

Paul Reiger was sworn in and raised concerns in reference to the fence section of the Zoning Ordinance; that he is concerned about barbed wire fencing; that a building permit was issued for a fence exceeding the 3.5 feet height requirement for a different parcel; and that he supports the Application.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11615 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The Property is unique due to its proximity to a dead end road and since it is a corner lot;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variance necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

Case No. 11616 – J & K Rentals – seeks a special use exception to retain a manufactured home type structure as an office (Section 115-114A and 115-210A(1) of the Sussex County Zoning Ordinance). The property is located on the northwest corner of DuPont Boulevard and Fitzgeralds Road. 911 Address: 17115 Fitzgeralds Road, Lincoln. Zoning District: HI-1. Tax Map No.: 1-30-6.00-88.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Scott Fitzgerald was sworn in and testified requesting a special use exception to retain a manufactured home type structure as an office; that the unit was approved by the Board in 2008; that the unit is used as the main office for the salvage yard; that the use has not nor will substantially adversely affect the uses of the neighboring and adjacent properties; that they own the adjacent properties; that there have been no changes to the unit since 2008; that he was not aware the approval expired after five (5) years; and that the use is needed for five (5) more years.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11616 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the special use exception be **granted for a period of five (5) years and for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11617 – Tanger Outlet Centers – seeks variances from the front yard and from the CHCOZ landscape setback requirements (Section 115-194.1E(3) and 115-82C of the Sussex County Zoning Ordinance). The property is located on the east side of Coastal Highway (Route 1) approximately 1000 feet north of Holland Glade Road. 911 Address: None Available. Zoning District: C-1. Tax Map No.: 3-34-13.00-325.16.

WITHDRAWN 7/28/2015

Case No. 11618 – Deketra Matos & Victor Matos – seek a special use exception to operate a daycare facility (Section 115-72C and 115-210A (3)(e) of the Sussex County Zoning Ordinance). The property is located on the south side of Ross Street approximately 226 feet west of Bridgeville Highway. 911 Address: 201 Ross Street, Seaford. Zoning District: B-1. Tax Map No.: 3-31-5.00-9.00.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Deketra Matos and Victor Matos were sworn in and testified requesting a special use exception to operate a daycare facility. Ms. Matos testified that the Applicants recently purchased the Property and wish to move her daycare business to this property; that the hours of operation are 7:00 a.m. to 7:00 p.m., Monday through Friday; that the ages of children range from birth to twelve (12) years old; that she ran a daycare at her previous address for two (2) years; that she will have one (1) employee; that the neighbors are in support of the Application; that she will care for twelve (12) children; that there is an adequate parking area; that the yard is fenced in; and that the area is residential and the use will not substantially adversely affect the uses of the neighboring and adjacent properties.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Mills stated that he would move that the Board recommend approval of Special Use Exception Application No. 11618 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Rickard – yea, Mr. Workman – yea, Mr. Hudson – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Case No. 11619 – Michael Saunders – seeks a special use exception for a garage / studio apartment (Section 115-32C and 115-210A(3)(a) of the Sussex County Zoning Ordinance). The property is located on the south side of Martin Lane approximately 57 feet west of Truitt Avenue. 911 Address: 102 Martin Lane, Rehoboth Beach. Zoning District: MR. Tax Map No.: 3-34-12.00-145.01.

Ms. Cornwell presented the case and stated that the Office of Planning and Zoning had not received any correspondence in support of or in opposition to the Application.

Michael Saunders was sworn in to testify about the Application. Chad Meredith, Esquire, presented the case to the Board on behalf of the Application and submitted exhibits to the Board for review.

Mr. Meredith stated that the Applicant is requesting a special use exception for a garage / studio apartment; that the property card for the Property indicates that the structure was built in 1954; that the current owner purchased the Property in 2014 and the two (2) units existed at that time; that William McManus acquired the Property in 1969; that Mr. McManus converted the structure into a two (2) unit dwelling in late 1969-early 1970; that the Property has continued to be used over the years as a two (2) unit dwelling; that there is a separate electrical box for each of the two units; that the Applicant was not made aware of any issues until he applied for a building permit to remodel the two (2) existing kitchens; that the use does not substantially adversely affect the neighboring and adjacent properties; that the existing unit is 720 square feet in size, therefore it does not exceed the 800 square feet maximum allowable square footage requirement; that there is adequate parking available for all units; that he has submitted three (3) letters in support of the Application; and that a local realtor submitted an affidavit stating the use does not adversely affect the values of neighboring and adjacent properties.

Mr. Saunders, under oath, confirmed the statements made by Mr. Meredith.

The Board found that two (2) parties appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11619 for the requested special use exception based on the record made at the public hearing because the use does not substantially adversely affect the uses of the neighboring and adjacent properties.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

OLD BUSINESS

Case No. 11604 – Mark Yoder and Polly Yoder – seek a variance to place a multisectional manufactured home that is more than five (5) years old (Section 115-20A(1)(h) of the Sussex County Zoning Ordinance). The property is located on the north side of Hickman Road approximately 453 feet east of Farm Lane. 911 Address: None Available. Zoning District: AR-1. Tax Map No.: 5-30-3.00-2.02.

Ms. Cornwell presented the case, which has been tabled since July 20, 2015 and stated that due to an error on the Application the case would have to re-advertised.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously that the case be **left open to allow the Applicant to submit a letter to withdraw this Application.** Motion carried 5 – 0.

The vote by roll call: Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, Mr. Hudson – yea, and Mr. Callaway – yea.

Meeting Adjourned 9:20 p.m.